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Butte-Sutter Basin Area Groundwater Users Corporation

P. O. Box 1116, Durham, CA 95938

September 20, 1999

Mr. Lester Snow, Executive Director
CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, California 95814

Re: Draft Programmatic EIS/EIR

Dear Mr. Snow:

The following are comments to the CALFED Bay-Delta Program Draft Programmatic EIS/EIR with accompanying appendices as well as a Revised Phase II Report (PEIS, Inclusive) which was released for public review on June 23, 1999.

Butte-Sutter Basin Area Groundwater Users Corporation (BSBGU) is a non-profit corporation established in 1991 to represent and work for the benefit of its membership, all of whom are groundwater users deriving their water from the Butte-Sutter Basin Aquifer which underlies portions of Butte, Glenn, Colusa and Sutter Counties. The corporation currently has approximately 200 members who use groundwater for agricultural, domestic and commercial purposes.

Following a review of the PEIS, BSBGU offers the following general comments, followed by comments on specific issues included in the document.

GENERAL COMMENTS

We believe the review and comment period allowed for such a comprehensive and large report is inadequate for proper response. Your September 23, 1999 deadline creates an unnecessary and undue burden on a critically important sector of stakeholders, namely those people and groups that are actively involved with agriculture. Harvests are occurring all across California at this time and people's livelihoods depend upon the timeliness of this activity. Your deadline is discouraging participation and cooperation by not allowing critical stakeholders equitable time for proper review and comments.

We request that the review and comment period be extended to the end of October 1999.

The problems and concerns facing the Bay-Delta are a direct result of the increasing population of the state resulting in the need for the development of NEW water. California' s population has increased from 1.5 million in 1900 to 20 million in 1970 to over 30 million today and is projected to be in excess of 45 million by 2020. While these projections are based on assumptions that are being challenged, we accept that population will be driving the need for new water. Because of this it is imperative that the CALFED look beyond merely the issues in the Bay-Delta alone and move towards a well-defined programmatic solution to statewide water supply problems. Only when statewide water needs are honestly and directly addressed will the Bay-Delta be assured of continued health and prosperity. Water sources must be developed at the point of population expansion so that locally permitted new demand has a direct correlation to carrying capacity. California's population expansion along the coast must be linked to local efficiencies or desalination. We look for this linkage in your document or justification for disregard of this issue.

STORAGE

BSBGU believes that the single most important factor for the success of the CALFED will be the development of new surface water storage facilities both north and south of the Delta.

The PEIS provides for opportunities for such new storage but the priority given to this aspect of the project is wholly lacking. This is evidenced by the minor proportion of the estimated stage 1 costs that are allocated to storage. (370 million of the 5.169 billion or 7% allocated to "integrated storage investigation" with only 70 million or 1% allocated for surface water).

More emphasis needs to be placed on the development of new surface water storage facilities. Further investigation in this area is unwarranted and gives the impression of being nothing more than a stalling tactic. The State of California has been studying/investigating possible locations for new surface water storage facilities for the last 40 years. Surely, specific sites can by now be identified and steps taken to develop new reservoirs. Even if large Government projects may require time for detailed Environmental Impact Report development, support for expedited small private projects which could alleviate water shortages in arid regions can contribute to a Delta solution by reducing competition for scarce resources between contractors south of the Delta; thus, diminishing pressure on Delta exports. We believe that this option belongs in an adequate investigation of alternatives. Why hasn't this been investigated?

Surface water storage is easier and more reliable to monitor and operate than are groundwater storage options. Such storage provides greater flexibility to control the stream and river flows necessary for improved fisheries and at the same time provide for the water needs to insure Bay-Delta purity and all necessary urban, agriculture, and environmental supplies. Surface water storage has the added benefit of enhanced flood protection during extreme flood events by capturing surface water runoff closer to its origin and then releasing it at a more constant rate over a longer period of time. This also creates potential recreational/economic opportunities in regions where the reservoirs are located rather than reducing or capping opportunities for groundwater extraction areas. Why was this area not fully investigated in the economic study?

In addition, increased surface water storage meets the need to develop NEW water while minimizing the risks of redirected impacts, and legal challenges to the California water rights system.

The CALFED Bay-Delta program should provide solid assurances that new surface water storage facilities will be constructed at the maximum level possible. In light of the length of time needed for approval and construction of specific facilities, surface water storage facilities should be given top priority in today's programmatic reviews. The PEIS should specifically identify the locations being considered for new or improved surface water storage facilities and provide time lines with definite dates for completion of these facilities. Linkages with environmental actions are an inadequate commitment, as specific criteria for phased actions have never been called out. This is another example of the inadequacy of this document at even a programmatic level for a thirty-year record of decision.

WATER TRANSFERS/GROUNDWATER/LOCAL ORDINANCES

Due to the inherent legal and geologic complexities of groundwater aquifers, BSBGU feels that a conjunctive use program in The Butte Basin should only occur on a very limited basis, e.g. only in time of emergency water needs. The Butte Basin Aquifer should not be considered as a continuous source of new water to be depended on in the future.

While we recognize and applaud the work done thus far in the area of water transfers, the true cost of water transfers must be addressed. Specifically, the costs of mitigating third party economic impacts to agriculture, industry and communities, which have the potential of being millions of dollars annually, must be documented. Additionally the opportunity costs from forgone economic development due to potential unreliability of groundwater levels and supplies because of water transfers involving groundwater pumping must be calculated including some regional costs for risk.

It is essential that extensive, accurate monitoring and mitigation plans be in place prior to any implementation of water transfer programs. Sufficient baseline data is essential in order to provide adequate safeguards for local citizens, economies and environments of the areas of origin. Additionally, all local and regional ordinances designed to protect local or regional water needs must be acknowledged and adhered to. California's "No Injury Rule" and full area of origin protection must be included and adhered to under any water transfer scenario. Transfer water involving groundwater in areas of origin must not be subject to pressure/incentives resulting from drought cutbacks in Project contracts in the area of the "voluntary transfers".

The CALFED Bay-Delta process must expand its description of "water rights" to acknowledge and include the California correlative groundwater rights rule, which entitles each overlying landowner to a fair and just portion of the available groundwater. Additionally, a distinction must be made that groundwater transferred outside an area which overlies a specific groundwater basin is subject to the appropriative rule which requires that there be surplus water. Such a case of appropriative rather than correlative designation would be a voluntary water transfer creating the equal claims to "shared storage impacts". Surplus water is defined as water in excess of the safe annual yield of the aquifer and overlying landowners must not need the

surplus water. Any impact to overlying or environmental use must be an indicator that there is no surplus at that time. The nature of agricultural operations and domestic well supply require weekly or daily availability to reliable water rather than annual or long term interpretations of "surpluses".

As groundwater users who are solely dependent on this source of water, BSBGU has the following specific comments and concerns on the Water Transfer Program Plan. These comments are written to indicate statements and policies with which we strongly disagree. We realize this is a programmatic approach to these issues, but to expect stakeholder acceptance, some guide lines, rules, and policies must be in place at its origin to instill any confidence in the process.

Section 1.2 -page1-3

- **"Providing a short-term method to move existing supplies from one location to another while other facilities are being constructed (new conveyance, surface storage, or conjunctive use), during temporary reductions in water supply due to outages of conveyance facilities,...effect."**

The goal of providing interim water supplies while new facilities are being constructed is blatantly misleading if new facilities are not simultaneously given top priority and financial support. The risk of becoming water dependant on the "interim source" is simply too great. In addition, due to the lack of cost analysis for third party impacts, it is misleading to define a cost/benefit analysis. Your proposal for an interim fix - appears to be a permanent solution hidden under the hollow promise of new storage which could generate **new water** that would create a longer lasting solution.

Section 1.2-page1-4

- Your statement **" Moving water from storage facilities (surface and subsurface)...for the environment."** shows a lack of understanding of basic groundwater hydrology. Groundwater aquifers not only retain water; they also can be conduits for the movement of groundwater from one area to another. For example, the Butte Basin Aquifer provides much of the groundwater for the southern Sacramento Valley and at times, even the Sacramento River, Yuba and Feather Rivers. The continued health and viability of the Butte Basin Aquifer is critical if this naturally occurring hydrologic conduit is to continue. To refer to groundwater basins as subsurface storage indicates a possible intent that hasn't been fully disclosed in the document.

Section 2.1-page 2-5

- **"Cal Water Code Section 1810 provides that... without unreasonably affecting the overall economy or the environment of the county from which is being transferred."**

The terms "without unreasonably affecting" the overall economy or the environment belies the issue of materiality of third party impacts. A million-dollar impact on a large metropolitan water district may be dismissed merely as an accounting change. Whereas, a million-dollar impact on a family farm may end an entire family's livelihood.

Due to the lack of definition of third party impacts no adequate or equitable cost analysis can be made. We believe that many of the impacts to third parties are "hidden" in the sense that they are not easily defined and require additional study. Hidden impacts may include decreased property values in areas immediately surrounding source areas. A loss of any income to the economy of groundwater source counties can have far reaching effects since source counties in general have lower overall incomes than larger areas proposed to receive the benefits of transferred water. A million-dollar loss in source areas when multiplied by the economic multiplier for agricultural products produced in source areas can have significant effects throughout the source counties' economies. That same dollar amount lost in areas with larger economies may go unnoticed by most reviews. Money from transfers typically goes to a few individuals. No studies have been completed to determine what percentage of revenues from water sales if any, remains and circulates in the area of origin's economy.

Who determines what's significant?

Why should groundwater source areas with little or nothing to gain be willing to absorb <u>any</u> loss to their present or future economies as a result of transfers?

<u>No loss to individuals or the economy of transferring counties is appropriate.</u> The concept of sustainability is not to diminish the potential of future generations through the actions of today. Using healthy groundwater basins to export resources out of basin is an example of an unsustainable action! How does CALFED justify this under their philosophy of no redirected impacts?

BSBGU strongly recommends additional study and research to equitably determine third party impacts of groundwater transfers in areas where the aquifer and environment are healthy and viable

Section 3.3.1-page 3-3

- **"Develop agreement on the definition of third-party impacts and identify which impacts should be addressed."**

All impacts <u>must be addressed.</u> - Not just develop a list. Full review of past transfers (involving all stakeholders) which caused damages or added expenses to third parties must be evaluated to form a comprehensive list prior to any new transfers from those areas.

- **"A mitigation or compensation fund for those who incur higher groundwater pumping costs as a result of transfers...on groundwater monitoring program.**

Having a mitigation fund is of little value unless it is administered by neutral, independent, third parties to the transfer process. There must be uniform, accessible procedures for making, evaluating, and compensating claims. The process must not place undue burdens (time wise or financial) on injured parties or it defeats its purpose. All expenses incurred for filing, justifying claims and for lost time involved in the process of validating claims must be compensated. If this is not done the impact of water transfers is being redirected to injured parties. The rule of no redirected impacts must apply to individuals and the environment in source areas as well receiving areas.

There must be an independent, neutral party with Regulatory Powers to monitor transfers, evaluate, stop abuses and levy penalties if needed. They must have legal power and authority to withdraw transfer permits if justified. Impact criteria and rules must be predetermined using third party stakeholders as well as agencies before out-of-basin transfers begin. If such an organization doesn't exist to prevent damages, those who can't afford court costs have no protection.

- Section 3.3.2-page 3-5

"Potential Solutions Options

- **Local water management plans (Assembly Bill [AB] 3030) incorporating rules on groundwater transfers."**

AB 3030 plans by their own definition provide no protections for the environment or individuals beyond the borders of 3030 plan areas. Since, at best, 3030 plans are only voluntary agreements where regulatory enforcement can be non-existent for purposes within their own boundaries, individuals in near proximity to areas with 3030 plans can expect no regulatory assistance from abuses that might occur within a nearby 3030 plan area.

All water transfers must fall under rules and guidelines established for a whole basin or sub-basin to protect the environment and legal water users who overlie the same basin or sub-basin. They must be responsible to one, neutral Regulatory Body. CEQA reports must be developed for a whole basin or sub-basin in which an entity with a 3030 plan lies who plans on water transfers out of that basin. NEPA economic and social criteria must be part of all transfer water studies, as the use will be co-mingled between Federal and State projects.

Section3.3.4-page3-6

- **"Some stakeholders are concerned that the analysis of environmental impacts associated with water transfers have been inadequate."**

Reports and monitoring in most cases have been lacking, not just inadequate. Guidelines to establish baseline data, establishing those baselines, and monitoring the environment must be incorporated in all out of basin transfer permitting processes. This must be a

requirement to receive permits for out of basin transfers. Otherwise, we could be redirecting environmental injury to help solve the Bay Delta's environmental problems.

Section 4.1-page 4-2 #7

- **"Promote and encourage...so water transfers do not cause degradation of groundwater basins or impair the correlative rights of overlying users and historical groundwater levels are sustained or improved."**

Correlative rights of overlying users differ between those who artificially create a need based on voluntary water sales for profit, and those overlying third parties that are totally dependent on the aquifer. Clear legal standing which reflects this hierarchy or shift from correlative to appropriative interpretation in the case of voluntary water transfers must be in place before out of basin water transfers can be considered a viable component to the Delta alternatives.

Section 4.1-page 4-2

- **"Water Transfer Criteria."**
  #3-"Water rights of sellers must not be impaired."

This should state that: Water rights of any legal user must not be impaired.

Section 4.4.1-page 4-4

- **"As an informational function, develop guidebooks...address impacts, if necessary."**

These rules must be predetermined with stakeholder input before transfers begin. They can be refined as needed but must be in place prior to transfers out of basin. The guidebook is referred to several times later in this document as though it will exist, but your initial reference states it will exist, " if needed". This statement should read: **A guide book to aid transfer proponents in impact analysis and develop a 'toolbox' of potential mitigation strategies to help proponents and decision makers address impacts will be developed using stakeholder input prior to out of basin transfers.**

Section 4.4.2-page 4-7

- **"For a transfer of water which is surplus to the needs of the water users or the transferring agency or the use of which is voluntarily foregone by a water user, Section 386 also requires a finding that such a transfer will not unreasonably affect the overall economy of the area from which the water is being transferred."**

According to documentation we've seen, you are assuming in the Sacramento Basin (which includes Butte Basin) that approximately 3 million AF of water is surplus and can be removed. The assumption is being made that there is adequate surplus groundwater from all sources to off set this shortfall if supplies of surface water are redirected. Surface water has been part of the overall water budget to Butte Basin since the early 1900s. Test pumping projects in 1991, 1992, and 1994 in Butte Basin indicate that there may be little surplus available even with the imported surface water. Yet, your basic transfer policies are not based on post impact analysis since none was ever completed and published after the Butte Basin Projects.

Section 4.5.3-page 4-11, Footnote 2

- **"There are other users of water that can be affected by stored water transfers besides the SWP and CVP. In some cases downstream appropriators might be injured by a change in historical releases of stored water. If they are affected, these affects should be mitigated to non-injury or the transfer would not be approved under water code."**

These same rules should apply to subsurface storage (groundwater basins). All injuries should be mitigated to non-injury or the transfer will not be approved.

Section 5.1.2-page 5-2, #5

- **"Establish a refill criteria policy for reservoir storage based water transfers (yr. 1).**

This same policy must apply to groundwater basins whether it is a passive activity or an artificial recharge program.

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- Key elements for stakeholder buy in has to include: Establish **a Neutral Regulatory Organization for all transfers out of basin including Pre 1914 Rights.**

ECO-SYSTEM RESTORATION PROGRAM (ERP)

In reviewing the Eco-system Restoration Plan (ERP) it is apparent that there are major inconsistencies in the plan. The most glaring of which calls for the restoration of the delta water purity standards to levels meeting the "post-dam" salinity levels of the late 1960's and early 1970's. These "post-dam" salinity levels are totally artificial and scientifically indefensible. It is apparent that they are being used only as a method of promoting the continued use of the Bay-

Delta as a conveyance device to move fresh water south of the Delta and to the communities surrounding the Delta. This results in a massively inefficient system that wastes millions of acre-feet of water annually.

The ERP must target the restoration of the Delta to "pre-dam" salinity and delta flows must be limited to more natural "pre-dam" levels. Plans must be developed and included in the PEIS to develop new more efficient methods, such as canals and pipelines of moving fresh water around the Delta and to the communities surrounding the Delta. These plans must also include the development of dependable surface water storage facilities to insure adequate supplies to operate these delivery structures.

Another area of concern that BSBGU has with the ERP is the plan to restore the eco-system along the rivers and steams that feed the Delta through the use of "meander zones" and river bank re-forestation.

More in depth analysis needs to be done in this area. Unlike the Delta, these rivers and streams currently provide the most efficient and cost effective method available for conveying water south to the Delta. Meander zones and bank re-forestation have the potential of decreasing the effectiveness of these conveyance systems by creating greater potential for river siltation and the clogging of the channels with debris from overgrown trees and other vegetation. Additionally, these concepts could have extremely detrimental and costly effects on local communities, economies, private property and infrastructures that have developed along or in close proximity to these waterways. It is essential that the PEIS more accurately review the concepts of meander zones and re-forestation to determine and identify all the adverse impacts that these concepts will have. A legal commitment to maintain timely carrying capacity within the established protected levee system must be assured even if that requires periodic excavation and vegetation management.

WATER SUPPLY RELIABILITY/ PREFERRED THROUGH-DELTA ALTERNATIVE

BSBGU realizes that a crucial factor in the success of the CALFED Bay-Delta Program is the ability to develop a more efficient and environmentally sound method of moving water through or around the Delta. As discussed above, trying to accomplish this task by moving water through the Delta is a grossly inefficient method. BSBGU therefore is not supportive of any through delta alternative and would be more supportive of the construction and use of an open channel isolated facility around the Delta to transport any water developed through new surface storage.

This support comes however with two major conditions:

1. The construction of an isolated facility must be directly linked to the construction of surface storage facilities both north and south of the delta. The construction of these storage facilities at a documented level that will insure firm water supplies during drought for any new water demands south of the Delta is absolutely critical. This is to insure that a consistent and adequate supply of water is always available for the

transfer facility's efficient operation without adversely impacting other water users in the state.

2. Delta salinity must be returned to "Pre-Dam" levels. It makes no sense to build an isolated facility to move water south and continue the wasteful practice of flushing the Delta with artificially high amounts of fresh water through the summer.

CONCLUSION

BSBGU understands the CALFED Bay-Delta Program is one of immense proportions and it is the first time in the history of the world that a plan of this magnitude has been undertaken. We are cautiously encouraged by the direction the program has taken to this point and remain committed to stay involved through the ultimate completion of the program.

CALFED needs only to abide by its own solution principals:

- Reduce conflicts in the system
- Be equitable
- Be affordable
- Be durable
- Be Implementable
- Have no redirected impacts

and it will have met the needs and concerns of the membership of Butte-Sutter Basin Area Groundwater Users Corporation.

Sincerely,

Mark Kimmelshue
President